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11 THE CERTIFICATEHOLDERS OF STRUCTURED ASSET MORTGAGE  
12 INVESTMENTS II INC., BEAR STEARNS MORTGAGE FUNDING TRUST  
13 2007-AR1, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-  
14 AR1

15 UNITED STATES BANKRUPTCY COURT  
16  
17 NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION

18 In re

19 JOHN ALLEN LOISELLE AND BEVERLY  
20 LYN LOISELLE,

21 Debtor(s).

Case No.09-72065-EDJ

Chapter 7

R.S. No. CJR-630

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
(11 U.S.C. § 362 and Bankruptcy Rule 4001)

DATE: March 26, 2010  
TIME: 10:00AM  
CTRM: 215

1300 Clay Street,  
Oakland, CA 94604-1426

22 Wells Fargo Bank, National Association as Trustee for the Certificateholders of  
23 Structured Asset Mortgage Investments II Inc., Bear Stearns Mortgage Funding Trust 2007-  
24 AR1, Mortgage Pass-Through Certificates, Series 2007-AR1 ("Movant"), moves this court for  
25 an order terminating the automatic stay of 11 U.S.C. § 362 as to Movant, so that Movant may  
26 commence and continue all acts necessary to enforce its security interest in real property  
27 generally described as 8340 Locust Place North, Dublin, California 94568.

28 On or about December 17, 2009, John Allen Loiselle and Beverly Lyn Loiselle  
("Debtors") filed a voluntary petition under Chapter 7 of the Bankruptcy Code, and John  
Kendall was appointed as Chapter 7 Trustee. As a result of said filing, certain acts and

proceedings against Debtors and the bankruptcy estate are stayed as provided in 11 U.S.C. § 362.

Movant moves this court for relief from stay under 11 U.S.C. §§ 362(d)(1) and 362(d)(2).

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I.**

#### **MOVANT IS ENTITLED TO RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(2).**

#### **NO EQUITY**

11 U.S.C. § 362(d)(2) provides that relief from the automatic stay shall be granted if the debtor does not have any equity in the property and the property is not necessary to the debtor's effective reorganization.

In In re San Clemente Estates, 5 B.R. 605 (Bankr. S.D. Cal. 1980), the court stated that: § 362(d)(2) reflects congressional intent to allow creditors to immediately proceed against the property where the debtor has no equity and it is unnecessary to the reorganization, even where the debtor can provide adequate protection under § 362(d)(1). (Emphasis added).

Id. at 610 (emphasis added).

In In re Mikole Developers, Inc., 14 B.R. 524, 525 (Bankr. E.D. Pa. 1981), the court stated that in determining whether equity exists in the property for purposes of § 362(d)(2), all encumbrances are totalled, whether or not all the lienholders have joined in the request for relief from stay. The Ninth Circuit has concurred with this view in Stewart v. Gurley, 745 F.2d 1194 (9th Cir. 1984).

An appropriate cost of sale factor should also be added to determine if the debtor has any equity in the property. La Jolla Mortgage Fund v. Rancho El Cajon Associates, 18 B.R. 283, 289 (Bankr. S.D. Cal. 1982).

On or about November 8, 2006, Debtors, for valuable consideration, made, executed and delivered to Land Home Financial Services ("Lender") a Note in the principal sum of \$495,000.00 (the "Note"). Pursuant to the Note, Debtors are obligated to make monthly

1 principal and interest payments commencing January 1, 2007, and continuing until December 1,  
2 2036, when all outstanding amounts are due and payable. The Note provides that, in the event  
3 of default, the holder of the Note has the option of declaring all unpaid sums immediately due  
4 and payable. A true and correct copy of the Note is attached to the Declaration in Support of  
5 Motion for Relief From Automatic Stay as exhibit A and incorporated herein by reference.

6 On or about November 8, 2006, the Debtors made, executed and delivered to Lender a  
7 Deed of Trust (the "Deed of Trust") granting Lender a security interest in real property  
8 commonly described as 8340 Locust Place North, Dublin, California 94568 (the "Real  
9 Property"), which is more fully described in the Deed of Trust. The Deed of Trust provides that  
10 attorneys' fees and costs incurred as a result of the Debtors' bankruptcy case may be included in  
11 the outstanding balance under the Note. The Deed of Trust was recorded on November 22,  
12 1006, in the Official Records of Alameda County, State of California. A true and correct copy  
13 of the Deed of Trust is attached to the Declaration in Support of Motion for Relief From  
14 Automatic Stay as exhibit B and incorporated herein by reference.

15 Subsequently, all beneficial interest in the Deed of Trust was sold, assigned and  
16 transferred to Movant. A true and correct copy of the Corporation Assignment of Deed of Trust  
17 evidencing the Assignment of the Deed of Trust to Movant is attached to the Declaration in  
18 Support of Motion for Relief From Automatic Stay as exhibit C and incorporated herein by  
19 reference.

20 The obligation under the Note is in default as of April 1, 2009, for failure to make  
21 payments to Movant. As of January 13, 2010, the total obligation due and owing under the  
22 Note is in the approximate amount of \$588,527.17, representing the principal balance of  
23 \$528,993.61, interest in the sum of \$35,512.05, late charges in the amount of \$293.91, escrow  
24 advances in the amount of \$21,084.35, and a recoverable balance in the amount of \$2,643.25.  
25 This is an approximate amount for purposes of this Motion only, and should not be relied upon  
26 as such to pay off the subject loan as interest and additional advances may come due subsequent  
27 to the filing of the Motion. An exact payoff amount can be obtained by contacting Movant's  
28 counsel. Further, Movant has incurred additional post-petition attorneys' fees and costs in

1 bringing the instant Motion. Moreover, the total arrears under the Note are in the approximate  
2 sum of \$56,568.92, excluding the post-petition attorneys' fees and costs incurred in filing the  
3 instant Motion. A true and correct copy of the contractual payment accounting pursuant to  
4 Local Rule 4001-1(g)(1) is attached hereto as exhibit D and incorporated herein by reference.

5 **II.**

6 **RELIEF FROM STAY**

7 **LACK OF EQUITY**

8 Movant is informed and believes that, based on the Debtors' bankruptcy Schedules and  
9 Statements, the fair market value of the Property is approximately \$450,000.00. True and  
10 correct copies of the Debtors' bankruptcy Schedules "A" and "D" are collectively attached to  
11 the Declaration in Support of Motion for Relief From Automatic Stay as exhibit E and  
12 incorporated herein by reference.

13 Based on the above, Movant maintains that the equity in the Property is as follows:

14	Fair Market Value:	\$450,000.00
15	Less:	
	Movant's Trust Deed	\$588,527.17
16	EMC Mortgage's Trust Deed	\$59,000.00
	Costs of Sale (8%)	\$36,000.00
17	Equity in the Property:	\$<233,527.17>

18  
19 As a result, there is no equity in the Property for the bankruptcy estate. Moreover, since  
20 this is a Chapter 7 proceeding, there is no reorganization in prospect. As a result, Movant is  
21 entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2).

22 Debtors' Statement of Intent indicates it is the intent of the Debtors to surrender the Real  
23 Property in full satisfaction of Movant's secured claim. A true and correct copy of the Debtors'  
24 Statement of Intent is attached to the Exhibits as exhibit F and incorporated herein by reference.

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26 /././

27 /././

28 /././

1 **III.**

2 **MOVANT IS ENTITLED TO RELIEF FROM THE**  
3 **AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(1).**

4 **CAUSE - LACK OF ADEQUATE PROTECTION**

5 Pursuant to the provisions of 11 U.S.C. §§ 361 and 362(d)(1), Movant is entitled to  
6 adequate protection of its interest in the Property.

7 Movant submits that adequate protection in this case requires normal and periodic cash  
8 payments, as called for by the Note, plus the repayment of any and all delinquent amounts owed  
9 to Movant, including all attorneys' fees and costs incurred in the filing of this motion.

10 Movant is informed and believes that Debtors are presently unwilling or unable to  
11 provide adequate protection to the Movant and there is no probability that adequate protection  
12 can be afforded to Movant within a reasonable time.

13 By reason of the foregoing, Movant is entitled to relief from stay under 11 U.S.C.  
14 § 362(d)(1), based upon the failure of Debtors to provide adequate protection to Movant.

15 WHEREFORE, Movant respectfully prays for an Order of this court as follows:

16 1. Terminating the automatic stay of 11 U.S.C. § 362, as it applies to the  
17 enforcement by Movant of all of its rights in the Real Property under the Note and the Deed of  
18 Trust;

19 2. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived;

20 3. Granting Movant leave to foreclose on the Real Property and to enforce the  
21 security interest under the Note and the Deed of Trust, including any action necessary to obtain  
22 possession of the Property;

23 4. Permitting Movant to offer and provide Debtors with information re: a potential  
24 Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan  
25 Workout/Loss Mitigation Agreement, and to enter into such agreement with Debtors;

26 5. Alternatively, in the event this court declines to grant Movant the relief requested  
27 above, Movant requests that an Order for adequate protection be issued, requiring the Debtors to  
28 reinstate and maintain in a current condition all obligations due under the Note and Deed of

1 Trust and all other deeds of trust encumbering the Real Property, including Debtors' obligations  
2 to pay when due (a) the monthly installments of principal and interest, as required under the  
3 Note; (b) tax/insurance obligations; and (c) any sums advanced by Movant on behalf of Debtors  
4 in order to protect Movant's interest in the Real Property, including all attorneys' fees and costs  
5 incurred in the filing of this motion;

6 6. That the attorneys' fees and costs incurred by Movant for filing the instant Motion  
7 be included in the outstanding balance of the Note as allowed under applicable non-bankruptcy  
8 law; and

9 7. For such other and further relief as the court deems just and proper.

10  
11 Dated: February 24, 2010

PITE DUNCAN, LLP

12  
13 /s/ CASPER J. RANKIN (CA SBN 249196)  
14 Attorneys for WELLS FARGO BANK,  
15 NATIONAL ASSOCIATION AS TRUSTEE FOR  
16 THE CERTIFICATEHOLDERS OF  
17 STRUCTURED ASSET MORTGAGE  
18 INVESTMENTS II INC., BEAR STEARNS  
19 MORTGAGE FUNDING TRUST 2007-AR1,  
20 MORTGAGE PASS-THROUGH CERTIFICATES,  
21 SERIES 2007-AR1  
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